

## **NIH POLICY MANUAL**

### **6030-1 - Salary Rate Limitation Legislation Provisions**

**Issuing Office: OA/OAMP/DAPE 496-6014**

**Release Date: 03/16/04**

**1. Explanation of Material Transmitted:** This Chapter is being revised to provide the NIH Appropriation Language for FY 04 regarding salary rate limitations under NIH contracts supporting the NIH Extramural R&D activities. The Consolidated Appropriations Act for FY 2004, containing this language was enacted under Public Law Number 108-199. On March 3, an Executive Order revised the Executive Level I salary from \$174,500 to \$175,700, retroactive to January 1, 2004. This revision reflects that change.

#### **2. Filing Instructions:**

**Remove:** NIH Manual Chapter 6030-1, Salary Rate Limitation Legislation Provisions, dated 02/04/04.

**Insert:** NIH Manual Chapter 6030-1, Salary Rate Limitation Legislation Provisions, dated 03/16/04.

**PLEASE NOTE:** For information on:

- o **content of this chapter**, contact the **Division of Acquisition Policy and Evaluation, OAMP, OA**, on **496-6014**.
- o **NIH Manual System**, contact the **Division of Management Support, Office of Management Assessment, OA**, on **496-2832**.
- o **on-line information**, enter this URL: <http://www1.od.nih.gov/oma/manualchapters>

**DATE: 03/16/04****REPLACES: 6030-1, DATED 02/04/04****ISSUING OFFICE: OA/OAMP/DAPE 496-6014****A. Purpose**

This issuance provides updated guidance and suggested language for use in solicitations and contract documents regarding salary rate limitations under NIH contracts that support the NIH Extramural R&D activities pursuant to the Consolidated Appropriations Act for FY 2004, Public Law (P.L.)108-199. Please note that multi-year cost-reimbursement contracts and fixed-price level-of-effort, time and material and labor hour contracts supporting the NIH Extramural activities, which use FY 90 through FY 03 funds, are still subject to the P.L.'s as cited below<sup>1</sup>:

| <b>Public Law</b> | <b>Period</b>     | <b>Issuance</b>                | <b>Salary Rate Limitation</b> |
|-------------------|-------------------|--------------------------------|-------------------------------|
| 101-166           | 10/1/89 - 9/30/90 | I&I DCG 90-1                   | \$120,000                     |
| 101-517           | 10/1/90 - 9/30/91 | I&I DCG 90-1 (Rev. 1)          | \$120,000                     |
| 102-170           | 10/1/91 - 9/30/92 | I&I DCG 90-1 (Rev. 2)          | \$125,000                     |
| 102-394           | 10/1/92 - 9/30/93 | NIH Manual 6030-1(10/26/92)    | \$125,000                     |
| 103-112           | 10/1/93 - 9/30/94 | NIH Manual 6030-1 (12/10/93)   | \$125,000                     |
| 103-333           | 10/1/94 - 9/30/95 | NIH Manual 6030-1 (10/12/94)   | \$125,000                     |
| 104-91            | 10/1/95 - 9/30/96 | NIH Manual 6030-1 (02/10/96)   | \$125,000                     |
| 104-208           | 10/1/96 - 9/30/97 | NIH Manual 6030-1 (10/31/96)   | \$125,000                     |
| 105-78            | 10/1/97 - 9/30/98 | NIH Manual 6030-1 (11/30/97)   | \$125,000                     |
| 105-277           | 10/1/98 - 9/30/99 | NIH Manual 6030-1 (11/23/98)   | Ex Lev III                    |
| 106-113           | 10/1/99 - 9/30/00 | NIH Manual 6030-1 (12/23/99)   | Ex Lev II                     |
| 106-554           | 10/1/00 - 9/30/01 | NIH Manual 6030-1 (02/01/2001) | Ex Lev I                      |
| 107-116           | 10/1/01-9/30/02   | NIH Manual 6030-1 (02/01/2002) | Ex Lev I                      |
| 108-7             | 10/1/02-9/30/03   | NIH Manual 6030-1 (03/05/03)   | Ex Lev I                      |

**B. Background:**

P.L. 108-199 was enacted on January 22, 2004. This Act provides funding for the HHS for FY 04. In so providing, Division E, Title II, General Provisions, Section 204 of P.L.108-199 states in pertinent part:

"None of the funds appropriated in this Act for the National Institutes of Health, the Agency for Healthcare Research and Quality, and the Substance Abuse and Mental Health Services Administration shall be used to pay the salary of an individual, through a grant or other

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<sup>1</sup>If copies of the I&Is or Manual Chapters related to each of the salary rate limitations contained in this list are needed, they are available from the issuing office. While they have been replaced by the current Manual Chapter, the salary rate limitations and contract language in each of the issuances must be complied with for the applicable fiscal year.

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extramural mechanism, at a rate in excess of Executive Level I."

The HHS Office of General Counsel has interpreted "... or other extramural mechanism..." as referring to cooperative agreements and contracts (as well as grants) for projects supporting the NIH Extramural R&D activities. The salary rate limitation of P.L.108-199 does not apply, however, to non-R&D contracts for the NIH Intramural activities, or other activities outside the R&D category.

From October 1, 2003 through December 31, 2003, the salary for an Executive Level I position is \$171,900. Effective January 1, 2004, the salary for an Executive Level I position increased to \$174,500. On March 3, 2004, an Executive Order increased the rate of pay for the Executive Level I salary, retroactive to January 1, 2004, to \$175,700.

The salary is not tied to the cost of living increases received annually by the General Schedule personnel. Rather, this salary may change periodically; when this occurs, this Manual Chapter will be appropriately revised. The Executive Level salaries can be found at the following URL Web site:

<http://www.opm.gov/oca/04tables/html/ex.asp>

**(Note - This site shows the FY 04 rates - Click on "Executive Schedule.")**

<http://www.opm.gov/oca/03tables/html/ex.asp>

**(Note - This Web site shows the 2003 Executive Level salaries)**

The salary rate ceiling applies to cost-reimbursement contracts that meet the definition above and to their subcontracts. It also applies to fixed-price level-of-effort, time and material, and labor hour contracts, where the Government's purpose is to buy the direct effort of an individual **and** the contract is for a project supporting the NIH Extramural R&D activities. It does not apply to fixed-price completion contracts. The rate limitation does not restrict the salary that an organization might pay an individual working under an NIH contract; it merely limits the portion of that salary that may be paid with Federal funds.

The rate limitation does not apply to fees paid to consultants.

Contracting officers should note that a salary rate limitation applies to FY 90 through FY 04 funds. The language recommended in this Manual Chapter for inclusion in

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solicitations and contracts notifies offerors and/or contractors that future HHS appropriation acts may continue to establish salary rate ceilings for the out-years of multiple-year awards. However, in negotiating multiple-year awards, the contracting officer may accept a higher salary rate if it is considered reasonable for fiscal years beyond 2004, as long as the language in Part D of this Manual Chapter is incorporated in the contract.

**C. References:**

1. P.L. 101-166, HHS Appropriations Act for FY 1990 funds.
2. P.L. 101-517, HHS Appropriations Act for FY 1991 funds.
3. P.L. 102-170, HHS Appropriations Act for FY 1992 funds.
4. P.L. 102-394, HHS Appropriations Act for FY 1993 funds.
5. P.L. 103-112, HHS Appropriations Act for FY 1994 funds.
6. P.L. 103-333, HHS Appropriations Act for FY 1995 funds.
7. P.L. 104-91, NIH Appropriations Act for FY 1996 funds.
8. P.L. 104-208, HHS Appropriations Act for FY 1997 funds.
9. P.L. 105-78, HHS Appropriations Act for FY 1998 funds.
10. P.L. 105-277, Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999.
11. P.L. 106-113, Consolidated Appropriations Act for FY 2000 funds.
12. P.L. 106-554, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2001
13. P.L. 107-116, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002
14. P.L. 108-7, Consolidated Appropriations Act, FY 2003
15. P.L. 108-199, Consolidated Appropriations Act, FY 2004

**D. Procedures**

1. Inclusion of the Provisions of the various P.L.(s) relating to Salary Rate Limitations in Solicitations, New Contract Awards, and Contract Modifications: Contracting officers should include the following language in Section H., in all solicitations and contracts supporting Extramural R&D activities (except fixed-price completion requirements):

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**ARTICLE H. \_\_ : SALARY RATE LIMITATION LEGISLATION PROVISIONS**

- a. Pursuant to the P.L.(s) cited in paragraph b., below, no NIH Fiscal Year funds may be used to pay the direct salary of an individual through this contract at a rate in excess of the applicable amount shown for the fiscal year covered. Direct salary is exclusive of fringe benefits, overhead and general and administrative expenses (also referred to as “indirect cost” or “facilities and administrative (F&A) costs”). Direct salary has the same meaning as the term “institutional base salary.” An individual’s direct salary (or institutional base salary) is the annual compensation that the contractor pays for an individual’s appointment whether that individual’s time is spent on research, teaching, patient care or other activities. Direct salary (or institutional base salary) excludes any income that an individual may be permitted to earn outside of duties to the contractor. The per year salary rate limit also applies to individuals proposed under subcontracts. It does not apply to fees paid to consultants. If this is a multiple year contract, it may be subject to unilateral modifications by the Government if an individual's salary rate exceeds any salary rate ceiling established in future HHS appropriation acts.

b.<sup>2</sup> Public Law No.                      Fiscal Year                      Dollar Amount of Salary Limitation

|         |       |                    |
|---------|-------|--------------------|
| 108-199 | FY 04 | Executive Level I* |
|---------|-------|--------------------|

- c. Direct salaries that will be paid with FY 04 funds are limited to the Executive Level I rate which was in effect on the date(s) the expense was incurred.

- \* For contract expenditures using FY 04 funds, for the period 10/1/03 - 12/31/03, the Executive Level I rate is \$171,900. Effective 1/1/04, for contract expenditures using FY 04 funds, the Executive Level I rate is increased to \$174,500,(increased by Executive Order on March 3 to \$175,700, which is retroactive to January 1) and will remain at that level until such time as it is determined to raise the Executive Schedule annual rates. See the Web site listed below for the Executive Schedule rates of pay:

For FY04 Executive Level salaries:

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<sup>2</sup>Insert the applicable Public Law number, applicable Fiscal Year and the dollar amount of the Salary Rate Limitation (i.e., for **FY 04**, insert **“Executive Level I”** under the column “Dollar Amount of the Salary Rate Limitation.”)

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<http://www.opm.gov/oca/04tables/html/ex.asp>

**(Note - This site shows the FY 04 rates - Click on “Executive Schedule.”)**

For FY 03 Executive Level salaries:

<http://www.opm.gov/oca/03tables/html/ex.asp>

2. As long as the contract remains in effect, the contracting office must modify paragraph b. of the clause above (Article H.) as the applicable part of each HHS Fiscal Year Appropriations Law addressing salary rate limitations is updated.

The contracting officer should monitor the contractor's invoices to ensure that the contractor is billing salaries at a rate no higher than the salary rate limitation applicable to the fiscal year in which the funds were obligated. Contracting Officers should assess the impact of salary rate limitation changes on their active contracts.

3. Because the Executive Level Salary has increased effective January 1, 2004, and the Public Laws regarding salary rate limitations cover the period October 1 through September 30, the following procedures should be used:

**Contracts funded with FY 04 funds:**

Between October 1, 2003 and December 31, 2003, contractors should use the Executive Level I salary of \$171,900 to calculate the salary rate to be billed for work performed during that period, if their salary is equal to or greater than \$171,900. Effective January 1, 2004, contractors may use the new Executive Level I salary of \$175,700 to calculate the salary rate to be billed for work performed on or after that date, if their salary is equal to or greater than \$175,700.

4. Examples of how the contracting officer should apply the salary rate limitation when proposed salaries exceed the current salary rate limitation are contained in Appendix 1.
5. Special instructions for Contract Modifications

All multiple year cost-reimbursement contracts supporting the NIH Extramural R&D

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activities, which have been incrementally funded to include allotments using FY-90 through FY 04 funds must be examined to determine if any individual's direct salary exceeds the ceiling applicable to each fiscal year in which the contract was effective and a P.L. containing salary rate limitations was applicable. In addition, fixed-price level of effort, time and material or labor hour contracts with options for succeeding years that support Extramural R&D activities and included FY-90 through FY 04 funds must also be reviewed as discussed above for multiple-year cost-reimbursement contracts. Those contracts in which any individuals's direct salary exceeds the applicable ceiling must be modified.

(NOTE: This includes all multiple-year cost-reimbursement and fixed-price level-of-effort, time and materials or labor hour contracts with option periods supporting the NIH Extramural R&D activities that use FY 90 and FY 91 funds, where any individual's direct salary rate exceeds the \$120,000 per year ceiling, FY 92, FY 93, FY 94, FY 95, FY 96, FY 97 and FY 98 funds where any individual's direct salary rate exceeds the \$125,000 per year ceiling, FY 99 funds, where any individual's direct salary rate exceeds Executive Level III, FY 00 funds, where any individual's direct salary rate exceeds Executive Level II, and FY 01, FY 02, FY 03 and FY04 funds, where any individual's direct salary rate exceeds Executive Level I.)

When modifying a contract where it has been determined that there are individuals being paid at a salary rate in excess of that allowable under the applicable P.L., the total dollar value of the contract does not have to be reduced in accordance with the direct labor funding reduction necessitated by the salary rate ceiling. Some examples of options open to the contracting officer as to the kinds of steps that can be taken to comply with the intent of the P.L.(s) are as follows: (1) the contracting officer may reduce the total amount of the contract by the amount of direct labor dollars exceeding the applicable salary rate limitation; (2) if the contracting officer chooses not to reduce the total dollar value of the contract, the Advance Understandings Article may be modified to indicate that the amount of dollars deducted from direct labor as a result of the application of the requirements of the applicable P.L. may not be expended by the contractor; or (3) the contractor and the contracting officer may agree at the time of the modification action to use the money saved by the direct labor reduction in some other cost category of the contract, and so document the file. The options given above are examples only, intended as guidance, and are not meant to be viewed as the only options available to the contracting officer.

#### **E. Records Retention and Disposal**

All records (**e-mail** and **non-e-mail**) pertaining to this Chapter must be retained and disposed

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of under the authority of NIH Manual 1743 Keeping and Destroying Records, Appendix 1, *NIH Records Control Schedule, Item 2600-A-4, Routine Procurement Files*.

**NIH e-mail messages:** The NIH e-mail messages (messages, including attachments, that are created on the NIH computer systems or transmitted over the NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. ***These records must be maintained in accordance with current NIH Records Management Guidelines. If necessary, the back-up file capability should be created for this purpose. Contact your Institute/Center (IC) Records Officer for additional information.***

All e-mail messages are considered Government property, and if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, the NIH staff conducting official reviews or investigations, and the Office of the Inspector General may request access to or copies of the e-mail messages. The e-mail messages must also be provided to Congressional Oversight Committees if requested and are subject to the Freedom of Information Act requests. Since most e-mail systems have back-up files that are sometimes retained for significant periods of time, e-mail messages and attachments may be retrievable from a back-up files after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

## **F. Management Controls**

The purpose of this Manual Issuance is to identify issues to be considered by the NIH contracting activities in awarding contracts that support NIH Extramural R&D activities, specifically relating to salary rate limitations required by statute.

1. Office Responsible for Reviewing Management Controls Relative to this Chapter:  
The Division of Acquisition Policy and Evaluation, Office of Acquisition Management and Policy, OA.
2. Frequency of Review: On-going review.
3. Method of Review: The Division of Acquisition Policy and Evaluation, Office of Acquisition Management and Policy, will maintain appropriate oversight through reviews of the IC preaward contract files conducted by the NIH Board of Contract Awards. The NIH Board of Contract Awards reviews a percentage of contract actions



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from each IC. Issues identified by the NIH Board of Contract Awards are provided to the IC for corrective action. When repetitive issues are identified, these are brought to the attention of the Acquisition Management Committee, which is responsible for addressing and resolving common acquisition issues. In addition, the Head of the Contracting Activity (HCA), is routinely apprized of any difficulties in the IC implementation of policy. Depending on the nature and extent of the problem, the HCA may recommend additional review, policy guidance and/or training of the contract staff.

4. The Year-End Summary Report of Repetitive Issues will be sent to the NIH Chief Contracting Officers and the Deputy Director for Management.

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The following examples explain the way the contracting officer should apply the salary rate limitation when proposed salaries exceed the current salary rate limitation:

EXAMPLE 1. INDIVIDUAL WITH FULL-TIME APPOINTMENT (based on contract award made on or after January 1, 2004, with a \$175,700 salary rate limitation)

|   |           |
|---|-----------|
| Individual's direct salary (institutional base salary)<br>for a FULL-TIME (twelve month) appointment<br>Research effort in proposal - 50% | \$180,000 |
|---|-----------|

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|--|-----------|
| Direct Salary proposed                   | \$ 90,000 |
| Fringe benefits proposed (25% of salary) | \$ 22,500 |
| Subtotal                                 | \$112,500 |

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| Offeror's overhead and G&A ("indirect" or "F&A")<br>costs at a rate of 45% of subtotal | \$ 50,625 |
|--|-----------|

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|--|-----------|
| Amount proposed - salary plus fringe benefits<br>plus associated overhead and G&A ("indirect" or "F&A")<br>costs | \$163,125 |
|--|-----------|

If a contract is to be awarded, the total amount of the individual's salary to be awarded for the above individual will be calculated as follows:

|  |           |
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| Direct salary - restricted to a RATE of \$175,700<br>multiplied by effort (50%) to be devoted to project | \$ 87,850 |
|--|-----------|

|   |           |
|---|-----------|
| Fringe benefits (25% of allowable salary) | \$ 21,963 |
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|          |           |
|----------|-----------|
| Subtotal | \$109,813 |
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| Associated overhead and G&A ("indirect" or "F&A")<br>costs at 45% of subtotal | \$ 49,416 |
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| Total amount to be awarded due to salary rate limitation | \$159,229 |
|--|-----------|

(Note: The amount of reduction due to salary rate limitation (\$163,125 proposed minus \$159,229 awarded) is \$3,896.)

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EXAMPLE 2. INDIVIDUAL WITH HALF-TIME APPOINTMENT [i.e., a part-time employee] (based on a contract award made on or after January 1, 2004 with a \$175,700 salary rate limitation)

|  |           |
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| Individual's direct salary (institutional base salary) for a HALF-TIME appointment (50% of a full-time twelve month appointment) | \$ 90,000 |
| Research effort in proposal - 30%  |           |

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| Direct Salary proposed                   | \$ 27,000 |
| Fringe benefits proposed (25% of salary) | \$ 6,750  |
| Subtotal                                 | \$ 33,750 |

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|---|-----------|
| Offeror's overhead and G&A ("indirect" or "F&A") costs at a rate of 45% of subtotal | \$ 15,188 |
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| Amount proposed - salary plus fringe benefits plus associated overhead and G&A ("indirect" or "F&A") costs | \$ 48,938 |
|--|-----------|

If a contract is to be awarded, the total amount of the individual's salary to be awarded for the above individual will be calculated as follows:

|  |           |
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| Direct salary - restricted to a RATE of \$175,700 multiplied by 50% appointment, multiplied by 30% effort to be devoted to project | \$ 26,355 |
| Fringe benefits (25% of allowable salary)  | \$ 6,589  |
| Subtotal   | \$ 32,944 |

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| Associated overhead and G&A ("indirect" or "F&A") costs at 45% of subtotal | \$ 14,825 |
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| Total amount to be awarded due to salary rate limitation | \$ 47,769 |
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(Note: The amount of reduction due to salary rate limitation (\$48,938 proposed minus \$47,769 awarded) is \$1,169.)

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EXAMPLE 3. INDIVIDUAL WITH NINE MONTH APPOINTMENT (based on a contract award made on or after January 1, 2004, with a \$175,700 salary limitation)

|   |           |
|---|-----------|
| Individual's direct salary (institutional base salary)<br>WITH NINE MONTH appointment | \$135,000 |
| Research effort in proposal - 50%   |           |

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| Direct Salary proposed                   | \$ 67,500 |
| Fringe benefits proposed (25% of salary) | \$ 16,875 |
| Subtotal                                 | \$ 84,375 |

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| Offeror's overhead and G&A ("indirect" or "F&A") costs<br>at a rate of 45% of subtotal | \$ 37,969 |
|--|-----------|

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| Amount proposed - salary plus fringe benefits<br>plus associated overhead and G&A ("indirect" or "F&A")<br>costs | \$122,344 |
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If a contract is to be awarded, the total amount of the individual's salary to be awarded for the above individual will be calculated as follows:

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| Direct salary - restricted to a RATE of \$175,700 (annual rate)<br>divided by 12 months multiplied by 9 months by 50% effort<br>to be devoted to project | \$ 65,888 |
| Fringe benefits (25% of allowable salary)  | \$ 16,472 |
| Subtotal   | \$ 82,360 |
| Associated overhead and G&A ("indirect" or "F&A")<br>costs at 45% of subtotal  | \$ 37,062 |

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| Total amount to be awarded due to salary rate limitation | \$119,422 |
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(Note: The amount of reduction due to salary rate limitation (\$122,344 proposed minus \$119,422 awarded) is \$2,922.)

NOTE: If a faculty member with a 9 month appointment works on this contract during his/her "off months," the monthly salary rate limitation is \$14,642 (\$175,700 divided by 12 months) multiplied by the proposed percent of effort during those months.